CF-C-152 (3)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.).

M.A.No. 1093/2003.

1/ Premsingh Chouhan , aged about 65 years,
S/o Late Shri ~~Ex~~ Dharmsingh Chouhan, &

2/ Smt. Brijesh Chouhan, aged about 64 years,
W/o Shri Premsingh Chouhan,

Both R/o Smrati Bhawan, Near Green Chowk,
Station Road, DURG, Distt: Durg (CG). ... APPELLANTS
PLAINTIFFS

V/s.

1/ L.M.Pandey, Aged about 53 years,
S/o Late Shri M.M.Pandey,
R/o Vaishali Nagar, Bhilai, Distt:Durg (CG)... RESPONDENT.
DEFENDANT.

MISC. APPEAL U/S 104, READ WITH ORDER XLIII, RULE 1(r) OF C.P.C., 1908, AGAINST ORDER DATED 06/10/2003 PASSED BY SMT. RAJNI DUBEY, VIITH ADDL. DISTRICT JUDGE, DURG TO THE COURT OF DISTT. JUDGE, DURG, IN ORIGINAL CIVIL SUTT NO. : 6-B/02.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 1093/2003 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	11-03-2005 Shri Uttam Pandey, counsel for the appellants. Shri H.B. Agrawal, Sr. Counsel with Smt. Usha Chandrakar counsel for the respondent. This appeal has been filed by the appellants under order 43 Rule 1 (r) of the CPC against the order dated 06-10-2003 passed by Additional District Judge, Durg by which the application for temporary injunction filed by the appellants has been rejected. 2. Case of the appellants is that they entered in to an agreement with the respondent for sale of the suit property for a consideration of Rs. 24,00,000/- and in view of the same he had already paid sum of Rs. 9,00,000/- in cash. Earlier an application for temporary injunction was filed by the appellants which was allowed by the trial Court on the condition that the respondent shall not alienate the property provided the appellants deposit a sum of Rs. 15,00,000/- in the trial Court. In compliance of the said order the appellants deposited a sum of Rs. 16,02,500/- in the form of UTI certificate which was encashable on demand according to the counsel for the appellants. 3. However, learned Court below recorded a finding that condition of the order of temporary injunction has not been fulfilled as the plaintiffs had not deposited the ordered sum in compliance of the order dated 13-07-2001. The appellants preferred MA No.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 1093/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

787/2001 before this Court against the above order and the same was disposed of by this Court by order dated 21-01-2003 and on the prayer of both the parties the matter was referred to the Lok Adalat for amicable settlement expeditiously. The above order was passed in pursuance of the compromise application which was registered as I.A. No. 126/2003 filed by both the parties.

4. Learned counsel for the appellants submits that after passing of this order the appellants were ready and willing to compromise by accepting Rs. 9,00,000/- with interest which was payable within three months from the date of passing of order dated 21-01-2003 but the respondent did not turn up in the Lok Adalat and therefore compromise could not be entered in to . Subsequently, another application for temporary injunction was filed by the appellants before the trial Court and by this application a prayer was made that the respondent / defendant be restrained from transferring the suit property in favour of others. This application was however rejected by the trial Court by the impugned order on the ground that the application for temporary injunction was already allowed by order dated 06-07-2001 and subsequent order dated 31-07-2001 passed by the court below which have not been set aside by the High Court and thus they are still in force and therefore the fresh order of temporary injunction can not be passed again by the Court.

5. Learned counsel for the appellants submits that during the pendency of the appeal the respondent / defendant has already

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मामला क्रमांक MA 1093/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

transferred the property through registered sale deed vide annexure A-14 for a consideration of Rs. 14,00,000/- and the transfer deed has been impounded by registering authorities for deficiency in the stamp duty. He further submits that in the circumstances the transfer effected by the respondent / defendant vide annexure A-14 is hit by section 52 of the Transfer of Property Act and therefore the defendant should be restrained from alienating the property as the impugned order passed by the Court below is erroneous.

6. On the other hand learned counsel for the respondent submits that he was already willing to abide by the compromise and he had deposited the amount of compromise along with interest before the trial Court vide Annexure A-11 and the impugned order suffers from no illegality as there was no temporary injunction in favour of the appellants and as such the defendant was at liberty to transfer his property which has already been done. He further submits that the instant appeal has become infructuous as the property in question already stands transferred and the only dispute to be adjudicated is sufficiency or otherwise of the stamp duty paid by the purchaser of the property.

7. I have heard counsel for the parties.

8. On the previous dates this court on the prayer of the parties enabled them to explore the possibility of compromise in terms of

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मामला क्रमांक MA 1093/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the earlier compromise where by the appellants had agreed to accept Rs. 9,00,000/- alongwith interest but after seeking instructions from the party it was submitted that compromise was not possible and therefore the matter is being heard on merits.

9. Taking in to consideration the facts and subsequent development in the case and the admitted position that the property in question has already been transferred by the respondent / defendant to some other third party and the registered sale deed has already been executed and possession of the property has been handed over to the third person, I am of the opinion that the instant appeal has become infructuous with the lapse of time. Even otherwise, I do not find any infirmity in the impugned order passed by the trial Court rejecting the application for temporary injunction inasmuch as the court below has already passed the order of temporary injunction on 06-07-2001 with the condition enumerated therein, and by subsequent order dated 31-07-2003 position has been further clarified and the said order is still enforce, the Court below has not committed any illegality in rejecting the application for temporary injunction filed by the appellants.

10. In the result the appeal has no merit and the same is liable for dismissal. Accordingly, the appeal is dismissed.

Sd/-
Dhirendra Mishra
Judge

Jyo

18.3.05
29.3.05